IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAIʻI

WILLIAM M. GILROY,

Petitioner,

v.

THE KONA COMMUNITY
HOSPITAL BEHAVIORAL HEALTH
AUTHORITIES, *et al.*,

Respondents.

Case No. 19-cv-00554-DKW-WRP

**ORDER GRANTING
APPLICATION TO PROCEED
WITHOUT PREPAYMENT OF
FEES OR COSTS**[1]

On October 11, 2019, Petitioner William M. Gilroy initiated this proceeding

with the filing of a petition for writ of habeas corpus.   Dkt. No. 1.   Because

Gilroy neither paid the $5 filing fee for habeas actions nor filed an application to

proceed without prepayment of the filing fee or costs, he was directed to take one

of those actions.   Dkt. No. 3.   On October 23, 2019, Gilroy paid the $5 filing fee.

Dkt. No. 5.   Roughly two weeks later, he also filed an application to proceed

without prepaying the filing fee or costs ("the IFP Application").   Dkt. No. 7.

Because the IFP Application indicates that Gilroy is indigent, the Court GRANTS

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[1]Pursuant to Local Rule 7.1(c), the Court finds this matter suitable for disposition without a
hearing.

the IFP Application.   Moreover, because Gilroy has already paid the filing fee, the Court instructs the Clerk to reimburse Gilroy the $5 filing fee he has already paid.

DISCUSSION

Federal courts can authorize the commencement of any suit without prepayment of fees or security by a person who submits an affidavit that demonstrates an inability to pay.   *See* 28 U.S.C. § 1915(a)(1).   While Section 1915(a) does not require a litigant to demonstrate absolute destitution, *Adkins v. E.I. Du Pont de Nemours & Co*., 335 U.S. 331, 339 (1948), the applicant must nonetheless show that he is "unable to pay such fees or give security therefor," 28 U.S.C. § 1915(a).

Here, Gilroy has made the required showing under Section 1915(a).   In the IFP Application, Gilroy states that he is currently confined in the Kona Community Hospital, but receives about $1,000 a month in social security benefits. Otherwise, Gilroy does not report any other income or property, except for $300 in a checking or savings account.   Gilroy further states that he has no regular monthly expenses, dependents, or any debts.   In light of these figures, Gilroy's income falls below the poverty threshold identified by the Department of Health and Human Services' ("HHS") 2019 Poverty Guidelines.   *See* HHS Poverty Guidelines, available at: https://aspe.hhs.gov/poverty-guidelines.   In addition,

Gilroy has insufficient assets to provide security.   Gilroy therefore qualifies for

IFP status.

Despite qualifying for IFP status and evidencing indigency, Gilroy has paid

the $5 filing fee.   This payment does nothing to change Gilroy's indigency status,

as qualifying for such status is not the equivalent of complete destitution.

Accordingly, the Court orders the Clerk to reimburse Gilroy the $5 filing fee that

he has already paid.[2]

At this stage in the proceedings, there is also the matter of service of

process, which the Federal Rules of Civil Procedure and statute indicate may be

done on behalf of a litigant proceeding in forma pauperis.   *See* 28 U.S.C.

§ 1915(d); Fed.R.Civ.P. 4(c)(3).   However, before process can be served on a

litigant's behalf, the litigant "must *request* that the marshal serve his complaint

before the marshal will be responsible for such service."   *Boudette v. Barnette*,

923 F.2d 754, 757 (9th Cir. 1991) (emphasis added).   Here, Gilroy, proceeding

pro se, has not requested that service of his habeas petition be made on his behalf.

See generally Dkt. No. 7.   Perhaps he wishes to do so on his own or has otherwise

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[2]The Court orders reimbursement even though Gilroy has not requested it.

made provision for it.   Therefore, at this time, the Court takes no further action with respect to service.

IT IS SO ORDERED.

Dated: November 20, 2019 at Honolulu, Hawaiʻi.
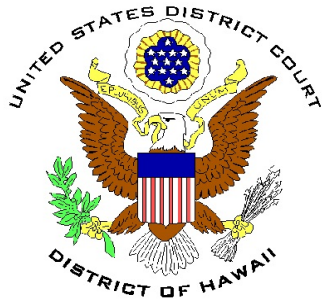
/s/ Derrick K. Watson
Derrick K. Watson
United States District Judge

William M. Gilroy v. The Kona Community Hospital Behavioral Health Authorities, et al.; Civil No. 19-00554 DKW-WRP; **ORDER GRANTING APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES OR COSTS**